



11TH DISTRICT  
STATE CAPITOL  
P.O. BOX 30014  
LANSING, MI 48909-7514  
PHONE: (517) 373-3815  
FAX: (517) 373-5986  
E-MAIL: davidnathan@house.mi.gov

MICHIGAN HOUSE OF REPRESENTATIVES

**DAVID E. NATHAN**

STATE REPRESENTATIVE

**TO:** Representative Tim Melton, District 29  
Chair, Education Committee

**FROM:** Representative David E. Nathan, District 11  
Chair, Education Subcommittee on Academic Emergencies

**DATE:** May, 27, 2010

**CC:** Education Committee members

**SUBJECT:** Subcommittee Findings and Policy Recommendations

On February 4, 2010 the Education Subcommittee on Academic Emergencies was appointed to evaluate four questions:

1. What determines an academic emergency?
2. Should the emergency financial manager also control academics, whether or not a financial emergency exists?
3. What level of oversight and accountability should pertain to academic managers or financial managers?
4. Should Emergency Financial Managers or Academic Managers have prior background or a proven track record in their appointed position?

After months of gathering research and taking testimony, enclosed are the subcommittee's findings and policy recommendations.

## Education Subcommittee on Academic Emergencies

### Policy Recommendations- June 27, 2010

State Representative David E. Nathan, Chair

Committee members: Rep. Lisa Brown, Rep. Tim Bledsoe, Rep. Justin Amash, Rep. Phillip Pavlov

#### QUESTION 1

What determines an academic emergency?

**Short Answer:** With the recent enactment of Race to the Top (RTTT), and considering that it is still in the very early stages of development, the Subcommittee on Academic Emergencies (the Committee) recommends that the legislature observe the effectiveness of the current statute as it pertains to our lowest performing schools under RTTT, for at least one (1) year. To date, the United States Department of Education (USDE) has not formulated the criteria to evaluate the lowest performing schools. Accordingly, it is not prudent to create a new set of criteria to define an academic emergency at this time. Once the criteria for low performing schools have been established, the Committee recommends that the legislature utilize trends in RTTT reports to define an academic emergency for a school district. After assessing the effectiveness of RTTT for at least a year, the state should be able to determine whether a school district has trends that may be used to define an academic emergency. The Committee recommends that the RTTT legislation (MCL 380.1280c) be amended to require the State Superintendent of Public Instruction (Superintendent) to publish a summary of each school district with schools listed in the bottom 5% of the state. This data should be used as one factor in determining alarming academic trends for a school district. If a school district is determined to have an academic emergency, the Committee recommends that the local electorate have the opportunity to vote on mayoral control, prior to state intervention.

#### RELEVANT STATUTORY PROVISION

**Race to the Top [MCL 380.1280c(1)].** Beginning in 2010, not later than September 1 of each year, the superintendent of public instruction shall publish a list identifying the public schools in this state that the department has determined to be among the lowest achieving 5% of all public schools in this state, as defined for the purposes of the federal incentive grant program created under sections 14005 and 14006 of title XIV of the American recovery and reinvestment act of 2009, Public Law 111-5.

#### BACKGROUND ON RACE TO THE TOP

House Bill 4787 was passed on December 19, 2009 as part of the Race to the Top (RTTT) package. The package included many provisions, but those related to the lowest performing schools in Michigan are detailed below:

RTTT law created a new authority for the Superintendent of Public Instruction (Superintendent) to monitor and intervene in failing schools. Specifically, beginning no later than September 1, 2010, the Superintendent would annually publish a list of the lowest achieving 5% of all public schools in the state. Pursuant to the requirements of the RTTT initiative under the American Recovery and Reinvestment Act of 2009 (ARRA), the Michigan Department of Education (MDE) is working with the USDE to finalize the criteria for determining which schools are among the lowest achieving 5%. As of recent inquiries, the MDE has not received final approval of the definition/criteria/work rules. MDE has stated that they hope to have final approval soon.

#### State School Reform/Redesign Officer and Redesign Plans

Once the failing schools are identified, those schools would be placed under the supervision of the State School Reform/Redesign Officer (RRO). The Superintendent is responsible for hiring a RRO to carry out the new functions related to failing schools.

The school board of each school identified as one of the lowest achieving 5% would have 90 days to submit a redesign plan to the RRO. The plan would be developed with input from the local teacher bargaining unit; the local superintendent; or if in place, an emergency financial manager. The plan must require the implementation of one of the four school intervention models that are approved for failing schools under the federal "Race to the Top" program. The four models are known as the Turnaround Model, the Restart Model, the School Closure Model, and the Transformation Model.

If the RRO determines that better results will be achieved by appointing a Chief Executive Officer to control multiple public schools for which redesign plans have been disapproved, the RRO may make a recommendation to the Superintendent for appointment of a CEO to control those multiple schools. In either case, one of the four aforementioned intervention models would be imposed. Addendums to the collective bargaining agreements would also be imposed to allow for the implementation of the intervention model.

#### Reform/Redesign School District

The RRO will create the Reform/Redesign School District. The District shall only consist of schools that are placed there by the RRO. The RRO will act as the Superintendent of the District, and will have all of the powers and duties that previously applied to the school board, or that the law allows. Specifically, the RRO has the following authority over schools in the Reform/Redesign District:

- Authority over all funds attributable to pupils at a school, including funds dedicated to capital projects, bond issues or financing documents.

- All rights and obligations under collective bargaining agreements and employment contracts.
- Rights to prosecute and defend litigation, and rights under statute, rule, and common law.
- Authority to delegate any of the RRO's duties to a designee.
- Power to terminate any contract entered into by the school board that applied to the school. The RRO could not terminate obligations to pay debt service on bonds, or to affect collective bargaining agreements. Collective bargaining agreements could only be affected through the addendum described above.

If the RRO determines that the school has made significant improvement in pupil achievement, then the RRO can recommend that any schools under the Reform/Redesign School District be released. The Superintendent must agree with the recommendation for the school to release the school.

### Reporting Requirements

The RRO is responsible for submitting quarterly progress reports to the legislature detailing improvement in student proficiency due to the measures of the failing schools program. Additionally, when the USDE adopts the final work rules for RTTT and the formula for identifying the lowest achieving 5% of public schools, the Michigan Department of Education must post that information on its website. Finally, the site must include a list of the lowest achieving 5% of all state public schools.

### **RECOMMENDATION:**

The Committee recommends that the criteria and policy of RTTT develop for at least one (1) year, and then be assessed, annually, for data specific to school districts. Without final approval of the definition/criteria/work rules from the USDE, developing additional standards for an academic emergency would be a futile effort.

On May 6, 2010, the Committee received the following testimony from Dr. David D. Arsen, professor of Educational Administration and Policy in the College of Education at Michigan State University:

In summary, the definition of a district academic emergency is a worthy objective; but each of the three factors I have mentioned—student poverty, student mobility, and uncertainties regarding the state turnaround accountability policy—make it very difficult to define a sound measure of academic emergency at this point.

Consequently, I think the best option at this point is to wait. Wait for the development of suitable student-level growth measures and for state and federal accountability policy pertaining to low-

performing schools to be more firmly established. Don't rush to define in state legislation a highly imperfect measure of district academic failure that could be arbitrary or create serious problems when implemented.

The Committee agrees with Professor Arsen that the best option, at this point, is to refrain from developing additional criteria that may completely confuse the current RTTT process. The Committee recommends that the legislature wait and allow the RTTT legislation to be completely defined and developed, and then use the established criteria to identify possible school districts with an academic emergency. For example, a school district may have a majority of its students in schools that have been placed under the control of the reform district. That may be considered an alarming trend to define an academic emergency in the future.

### **DEFINING AN ACADEMIC EMERGENCY**

Based on the aforementioned recommendation, the Committee does not believe it is prudent to define an academic emergency at this time. However, the Committee considered it relevant to highlight legislation that has been adopted in other states, dealing with assessing school districts for academic emergencies, detailed below.

#### **Louisiana:**

Louisiana transfers failing schools into a Recovery School District under the direction of the State Board of Education where they remain for five (5) years. **Louisiana uses the terms "academically in crisis" and "academically unacceptable"** to describe schools to be transferred to the Recovery School District. Criteria for academically unacceptable are based on school performance scores and lack of progress for two years on academic growth targets:

**"Academically in crisis"** means any local system in which more than 30 schools are academically unacceptable or more than 50 percent of its students attend schools that are academically unacceptable.

**"Academically unacceptable"** means that a school is academically unacceptable pursuant to a uniform statewide program of school and district accountability established pursuant to rules adopted by the State Board of Elementary and Secondary Education, hereinafter referred to as the "state board," under authority of law.

#### **Ohio:**

Ohio has legislation that requires the state department of education to annually assess school districts on performance indicators created by the state board of education. These factors include student performance on assessments, rates of student

improvement on assessments, student attendance, and breadth of coursework available within the district, graduation rates, and other indicators of student success. Districts or buildings are categorized as "excellent," "effective," "needs continuous improvement," under an "academic watch," or in a state of "**academic emergency**," based on adequate yearly progress under No Child Left Behind (NCLB) and the performance indicators.

**California:**

California enacted new legislation in response to RTTT reforms that defines persistently, low-achieving schools, as meeting any number of criteria, including the lowest 5% of schools on NCLB assessments, or a high school with a graduation rate below 60% for three (3) consecutive years.

**Washington:**

Washington state, as of 2008, provided no state-imposed consequences for poor academic performance of schools or districts, other than permitting the withholding of federal funds and providing professional development. Washington plans to seek approval from the USDE for the use of its own accountability index and state system of support instead of the federal accountability system under NCLB.

**Texas:**

The Texas statute was amended in 2009 to provide that the commissioner of education may appoint a board of managers or assign a campus intervention team to oversee a school district or school that fails to satisfy accreditation criteria, academic performance standards, or any financial accountability standard for two years. The indicators of student achievement include assessment results, dropout rate, and graduation rate. Schools that fail to satisfy standards may be subject to sanctions. The commissioner may revoke a district's accreditation; order annexation to an adjoining school district, or in the case of charter schools, order closure of all programs under the district's charter.

**RECOMMENDATION:**

The Committee recommends that RTTT (MCL 380.1280c) be amended to require the Superintendent to publish additional data for the annual list of the lowest achieving 5% of all public schools in the state. Each list published by the Superintendent should be required to summarize the following, regarding the lowest 5%:

- Number of schools in the lowest 5%, per school district
- Number of schools in the school district
- Number of pupils in the lowest 5%, per school district
- Number of pupils in the school district

The Committee recommends that the legislature use this data as one factor in identifying alarming trends within a school district, in addition to evaluating the school district with the criteria set forth in RTTT.

### **MAYORAL CONTROL OF A SCHOOL DISTRICT**

Over the last 20 years there has been frequent discussion on mayoral control of school districts. According to an article in the Education Week publication, several big-city districts employ a mayoral-accountability governance structure. These include Boston; Chicago; Cleveland; Washington D.C.; Harrisburg, Pa.; New Haven, Conn.; New York City; and Providence, R.I. Baltimore and Philadelphia are jointly governed by the Mayor and the Governor.

In 2007, the book *The Education Mayor: improving America's Schools* did a comprehensive study of mayoral-appointed school boards. They found that mayors can improve not only student performance, but management efficiency, financial stability, and public confidence as well. For more information on this study, please visit:  
<http://www.edweek.org/ew/articles/2009/10/14/07wallace-wong.h29.html>

### **RECOMMENDATION:**

As it relates to an academic emergency, the Committee does not recommend state intervention prior to the local electorate having the opportunity to vote on whether or not the mayor should control the school district. If the legislature defines "academic emergency," and a school district is determined to have an academic emergency, the Committee recommends that the legislation allows a specified period of time for the local electorate to vote on mayoral control. If the referendum is unsuccessful, or the local government waives this option, then the legislation should specify other options for those school districts.

<b>Education Subcommittee on Academic Emergencies</b> <b>Policy Recommendations- June 27, 2010</b> <b>State Representative David E. Nathan, Chair</b> Committee members: Rep. Lisa Brown, Rep. Tim Bledsoe, Rep. Justin Amash, Rep. Phillip Pavlov	
<b>QUESTION 2</b>	<b>Should the Emergency Financial Manager also control academics, whether or not a financial emergency exists?</b>

**Short Answer:** No. The Emergency Financial Manager ("EFM") is responsible for bringing the school district to fiscal solvency. Although the Local Fiscal Responsibility Act (Act 72 of 1990) expressly gives EFMs control of all fiscal matters, control over academic curriculum, course study, testing programs, etc., is not expressly delineated in the school district EFM responsibilities. However, such responsibilities are expressly delineated in the Revised School Code (Act 451 of 1976) as general powers of the school board. Developing an academic plan and methodologies requires technical expertise and trust of an individual, or individuals, familiar with the backgrounds and academic needs of the pupils in that district. It is imperative for parents, the community and local elected officials to remain directly involved in the school improvement process. The Education Subcommittee on Academic Emergencies ("the Committee") recommends that upon the appointment of an EFM to a local school district, the district be required to submit a "Financial Emergency School District Improvement Plan" ("SDIP") that is prepared by the local school board, with input from the community, and assistance from the local Intermediate School District ("ISD"). All three parties, the school board, ISD, and EFM, would be required to sign off on the SDIP, and any amendments. Lastly, the Committee recommends that Act 72 be amended to require the SDIP to be incorporated in the EFM's written financial plan, with quarterly progress reports.

NOTE: Based on the Committee's recommendations for Question 1, these recommendations do not assume that an academic emergency exists in the school district.

### RELEVANT STATUTORY PROVISIONS

**MCL 141.1241 Control over fiscal matters; fiscal decisions; actions by emergency financial manager.**

- (1) Upon appointment...an emergency financial manager shall immediately assume control over all fiscal matters of, and make all fiscal decisions for, the school district for which he or she is appointed.
- (2) In implementing this article and performing his or her functions under this article, an emergency financial manager may take 1 or more of the following actions:
  - (a) Examine the books and records of the school district.
  - (b) Review payrolls or other claims against the school district before payment.

- (c) Negotiate, renegotiate, approve, and enter into contracts on behalf of the school district.
- (d) Receive and disburse on behalf of the school district all federal, state, and local funds earmarked for the school district. These funds may include, but are not limited to, funds for specific programs and the retirement of debt.
- (e) Adopt a final budget for the next school fiscal year and amend any adopted budget of the school district.
- (f) Act as an agent of the school district in collective bargaining and, to the extent possible under state labor law, renegotiate existing and negotiate new labor agreements.
- (g) Analyze factors contributing to the financial condition of the school district and recommend to the legislature steps that need to be taken to improve the district's financial condition.
- (h) Require compliance with his or her orders, by court action if necessary.
- (i) Require the attendance of witnesses and the production of books, papers, contracts, and other documents relevant to an analysis of the financial condition of the school district.
- (j) Recommend to the governor, the legislature, and the state board that the school district be reorganized with 1 or more contiguous school districts.
- (k) Consolidate divisions or transfer functions from 1 division to another division within the school district and appoint, supervise, and, at his or her discretion, remove, within legal limitations, heads of divisions of the school district.
- (l) Create a new position or approve or disapprove the creation of any new position or the filling of a vacancy in a permanent position by an appointing authority.
- (m) Seek approval from the state board for a reduced class schedule in accordance with administrative rules governing the distribution of state school aid.
- (n) Employ or contract for, at the expense of the school district and with the approval of the superintendent of public instruction, auditors and other technical personnel considered necessary to implement this article.
- (o) Reduce expenditures in the budget of the school district.
- (p) Borrow money on behalf of the school district.
- (q) Approve or disapprove of the issuance of obligations of the school district.
- (r) Order, as necessary, 1 or more school millage elections for the school district consistent with the school code of 1976, the Michigan election law, Act No. 116 of the Public Acts of 1954, being sections 168.1 to 168.992 of the Michigan Compiled Laws, and sections 6 and 25 through 34 of article IX of the state constitution of 1963.
- (s) Sell or otherwise use the assets of the school district to meet past or current obligations, provided the use of assets for this purpose does not impair the education of the pupils of the district.
- (t) Exercise the authority and responsibilities affecting the financial condition of the school district that are prescribed by law to the school board and superintendent of the school district.

## General Powers of School Boards

- **MCL 380.11a.** The general powers of school districts are listed: educating pupils, providing for their safety and welfare, acquiring, maintaining, and disposing of school property, hiring and supervising employees and contractors, and receiving, borrowing, and spending school district funds. The law specifies that a school board shall govern general powers school districts in carrying out these duties.

- **MCL 380.1229.** A school district board shall employ a superintendent of schools, under a contract not to exceed five (5) years. The board shall prescribe the duties of the superintendent.
- **MCL 380.1246.** A person employed as a superintendent, principal, assistant principal, or other person administering instructional programs or as a chief business official must have a valid Michigan school administrator's certificate issued by the State Board of Education, meet continuing education requirements established by the state, or be enrolled in a program to earn a certificate within six (6) months of beginning employment.
- **MCL 380.1278.** The board shall provide a core curriculum and alignment of the instructional program for delivering the curriculum.
- **MCL 380.1282.** The board shall determine the courses of study and provide a core academic curriculum.

### **First Class School Boards**

- **MCL 380.431a.** The board has the power to purchase, lease, and take by right of eminent domain all property, erect and maintain or lease all buildings, employ and pay all persons, and do all other things necessary in its judgment for the proper establishment and management of the public schools.
- **MCL 380.471a.** The board may appoint a superintendent for a term not to exceed 6 years.
- **MCL 380.483a.** The board shall perform the following functions: central purchasing, payroll, employment, contract negotiations, property management and maintenance, bonding, special education, allocation of funds and adoption of the budget, and determination of the curriculum and establishment of testing programs.

### **BACKGROUND ON ACADEMIC CONTROL UNDER THE LOCAL FISCAL RESPONSIBILITY ACT (ACT 72 OF 1990)**

Act 72 does not appear to give an EFM "control" over creating academic/school improvement plans

**NOTE:** For the purposes of these recommendations, "academic control" is defined as establishing academic curriculum/school improvement plans, academic priorities, course study, testing procedures, methodologies, benchmarks, rationale, etc.

The general powers of local school boards are adopted under The Revised School Code (Act 451 of 1976). The academic-related powers include, educating pupils, providing for their safety and welfare, determine the courses of study, and provide a core curriculum and alignment of the instructional program for delivering the curriculum. Act 72 (MCL 141.1241) defines the control of school district Emergency Financial

Managers ("EFM") over "all fiscal matters," and lists specific actions that may be taken by the EFM.

After comparing and contrasting general powers of a school board under the Revised School Code, with actions that may be taken by the EFM, the Committee determined that many of the powers of school board were expressly vested in the EFM. However, the Committee also determined that all of the general powers related to the academic powers of the school board, were not expressly vested in the EFM (e.g., educate pupils, determine courses of study).

Act 72 [MCL 141.1241(g)] states that an EFM may "[a]nalyze factors contributing to the financial condition of the school district and recommend to the legislature steps that need to be taken to improve the district's financial condition." In the Committee's opinion, this statutory provision establishes that if and when the EFM concludes that the academic curriculum, for example, is causing the financial condition of the school district, he or she should make recommendations to the legislature on how to improve the district's financial condition.

On January 21, 2010, the EFM for Detroit Public Schools appeared before the Education Committee and testified that there was an "academic emergency" in Detroit Public Schools ("DPS") that was directly related to the finances. The EFM recommended that Act 72 be amended to clearly give school district EFMs control over academics. This is one example of an EFM analyzing factors contributing to the financial condition of the district, and then making recommendations to the legislature.

Given the unprecedented nature of this issue, this subcommittee was appointed by Education Committee Chair Tim Melton. On January 21, Chair Melton also noted that the state has never defined an academic emergency, nor has the state enacted legislation that allows state takeover of a school district for academics. As a result, many people have speculated the legislative intent of Act 72, and whether it was drafted to include academic control by the EFM, in addition to financial control.

After thoroughly reviewing the provisions of Act 72, it is the Committee's opinion that financial control and academic control are not mutually exclusive. Act 72 was clearly not drafted with the intent of giving EFMs control over things such as courses of study, curriculum and testing programs, etc. For example, MCL 141.1241(t), which appears to be a catch-all provision, states that the EFM may exercise the authority and responsibilities "affecting the financial condition of the school district" that are prescribed by law to the school board and superintendent. The language does not say the EFM may exercise "all" authority and responsibilities of the school board. Although academics may affect the financial condition of the school district, the language in Act 72 clearly intends to give EFMs control over finances, and not all matters.

### Detroit Public Schools Financial Emergency

Although several EFMs have been appointed in the State of Michigan, only one school district EFM has been appointed to date, for Detroit Public Schools (DPS). The tumultuous relationship between the EFM and school board in DPS has virtually charged the legislature with providing some clarity and direction regarding this issue. The highly publicized litigation between the two parties has done absolutely nothing for educating the children of DPS.

On May 6, 2010, Christopher Wigent, Superintendent of Wayne RESA, noted:

Whenever state intervention occurs, it is important to have a clarification of roles up front-if not, confusion and political games will be played which helps fuel the fire for those who do not necessarily want change; this confusion becomes the focus- not the children.

Furthermore, during a subcommittee meeting held in Detroit on March 1, 2010, the Committee received testimony from several teachers and students, who stated that the environment in DPS is contentious and confusing. Keith Johnson, president of the Detroit Federation of Teachers, testified that his members had recently received two different directives, one from the superintendent, and one from the EFM. Mr. Johnson requested that it be clear who has control over academics.

### **RECOMMENDATIONS:**

#### **I. SCHOOL DISTRICTS EFMS SHOULD NOT HAVE "ACADEMIC CONTROL," WHETHER OR NOT AN ACADEMIC EMERGENCY EXISTS**

Even if there was a proper definition for an "academic emergency" for a school district, the Committee does not recommend that EFMs control academics, for two reasons: a) Act 72 does not require the EFMs to possess the "technical expertise" necessary to effectively design an academic/school improvement plan, and b) Academic/school improvement plans should be developed with the input of the local community in order to effectuate a meaningful plan for the pupils of that district.

- a. Act 72 does not require the "technical expertise" necessary to effectively design a school improvement plan and/or methodology for executing the plan.**

On May 6, 2010, the Committee received the following testimony from Dr. David D. Arsen, professor of Educational Administration and Policy in the College of Education at Michigan State University:

To successfully turnaround the academic performance of a school district, a leader requires many skills and conditions, but I would like to focus on two that strike me as particularly germane: 1) technical expertise and 2) organizational trust.

*Technical expertise* refers to the knowledge of what education researchers call the instructional core. That is, it requires the capacity to change the way teachers and students interact around subject matter. Change in the instructional core requires teachers and principals to learn something new, to change their professional practice. In order to lead this change, an emergency academic manager must understand what it entails, that is to have technical expertise in teaching and learning. It's not simply a matter of being a good manager.

There are many examples nationwide of strong managers or mayors taking control of troubled school districts. Many have been able to balance budgets, but one is hard pressed to find compelling examples where this strategy has generated sustained improvements in student learning.

One irony of emphasizing the importance of technical expertise in teaching and learning here in Michigan is that the state hosts—particularly at Michigan State University and the University of Michigan—one of the most celebrated concentrations of researchers anywhere in the world who have a deep understanding of the relevant knowledge. Now I'm not suggesting that we ought to appoint a professor as emergency academic manager. That would be a disaster for sure. But there is a lot of technical expertise here in Michigan. That knowledge, which was created in part with the support of Michigan taxpayers, ought to be utilized in the process of improving our poorly performing districts.

Let me turn now to *trust*. There is growing recognition of the critical role trust plays in well functioning organizations, including schools. This is not simply a loose, subjective concept. Nobel economist Kenneth Arrow (1974) describes trust as a "lubricant," greasing the way for efficient operations in organizations. Trust promotes effective communication, cooperation, and adaptability, which are the foundations for effective relationships in schools.

As trust declines, organizational effectiveness declines. People must engage in self-protective actions and continually guard against the opportunistic behavior of others.

Research on trust offers many pertinent findings for the question at hand. First, trust is strengthened when parties have ongoing relationships in which their interactions demonstrate benevolence, support, and concern. Second, people have less incentive to act in a trustworthy manner when there is uncertainty about the durability of their relationship. Third, trust is more difficult to establish when parties do not enter into a relationship freely, but rather under compulsion. Fourth, trust is promoted when the behavior of those in authority positions is characterized by consistency, integrity, open communication, and a willingness to share control

Establishing trust is a serious challenge in schools or districts that have been designated as "failing." When teachers and administrators feel threatened, or accountable for problems beyond their control, they may be reluctant to cooperate with an emergency manager to make necessary changes in work routines or personnel.

The importance of trust for an emergency academic manager can scarcely be overstated. Significant improvements in school performance will require changes in how the school is organized and in how teachers work. These changes may include cutting jobs for teachers and other staff; altering the way administrators share power with teachers; adopting new materials and teaching practices. Unless great care is taken in an emergency academic manager's appointment and the specification of their responsibilities and authority, he or she is likely to operate in an extremely turbulent, contentious, short-term and distrustful environment that's unlikely to establish the foundation for needed academic changes.

I think it doubtful that simply extending the authority of an emergency financial manager to academic issues provides much assurance of the leadership that's needed to improve academic outcomes. Indeed given the strong possibility that an emergency financial manager will lack technical expertise in teaching and learning and would face serious obstacles in generating needed organizational trust, I think it would be misguided to establish in state law a provision assigning control over academic affairs to an emergency financial manager.

The Committee agrees with Dr. Arsen that *technical expertise* and *trust* are two major factors needed for the individual, or individuals, who control academics in a school district. As discussed in more detail in the Committee's recommendations for Question 4, Act 72 currently only requires "competence in fiscal matters" for school district EFMs. The Act does not require any background within the school district as an educator, education administrator, or any other experience in education.

The Committee's intent was to create recommendations that appreciate the uniqueness of educating children, while also respecting an EFM's control over financial matters. Because it is possible for the Governor to appoint an EFM who does not have "technical expertise" within the school district, the Committee recommends that EFMs should not have complete academic control.

**b. Academic plans/school improvement should be developed by members of the local community, in order to effectuate a meaningful plan for the pupils of that district**

Local school board members are comprised of the electorate. The Committee received testimony from numerous experts, who all testified that academic plans are specific to the locality. On February 18, 2010, the Committee received testimony from Dr. William Schmidt, Distinguished Professor of Education at Michigan State University. While discussing curricular inequalities among school districts within the State of Michigan, Professor Schmidt noted the following:

There are huge variations that exist across the state; there are differences from grade to grade; the amount of time that should be

allocated to each topic of study varies between school districts; curriculums must be designed in coherent ways for a particular district, but still maintain the state's standards.

School board members are situated to identify, communicate and receive community feedback on academic issues within the district. The board's relevant background and knowledge within the community should be utilized to develop academic plans, in addition to the knowledge and input from teachers, parents, and the community as a whole.

#### Academic control vs. financial oversight of academics

Although the Committee does not recommend that EFMs control academic/school improvement plans for a local school district, the Committee does acknowledge that academics and finances are related. Academic plans are associated with projected expenses and anticipated revenues for the district. Accordingly, EFMs must maintain some level of involvement in the process of creating academic/school improvement plans.

## **II. "FINANCIAL EMERGENCY SCHOOL DISTRICT IMPROVEMENT PLAN"- EFM, School Board, and Intermediate School District (ISD)**

The Committee's next recommendation is based on how to structure the relationship between an appointed EFM and the school board, in developing an academic/school improvement plan. The Committee received numerous testimonies regarding the lack of cooperation between the school district EFM and school board, on both sides.

The reality of the situation is that upon the appointment of an EFM, neither the EFM nor the school board is fully equipped to develop a meaningful academic plan. An EFM does not possess "technical experience" or necessary trust within the community, and the school board does not possess the power to make financial decisions. Accordingly, it is the Committee's recommendation that, solely for the purposes of academic/school improvement plans, the state introduce a third element to work as an intermediary between the EFM and school board.

Intermediate School Districts ("ISDs") are well situated and professionally staffed to serve as a conduit between the EFM and school board. Intermediate School Districts have a level of permanence within the community, and in most cases, have developed relationships of trust with the local school board. On May 6, 2010, the Committee received the following testimony from Christopher Wigent, Superintendent of Wayne Regional Educational Service Agency (Wayne RESA):

There is an important role for ISDs/RESA in this process- collecting data, making recommendations, assisting with the turn around, etc.

[ISDs] have a relationship with the MDE and our local school districts. ISDs already have resources in place and perhaps will give a local feel to the work (or at least a county feel).

The Committee also received the following testimony from Professor Arsen on May 6:

I have not been asked to articulate a set of institutional arrangements among an emergency financial manager, a local school district's elected board and other parties that would establish a more promising foundation for improving district-wide academic outcomes. In my view, however, this is precisely the task that state policy makers need to embrace. I will only advise that such an institutional structure should require a local school board to address the financial constraints established by the emergency financial manager while implementing long-term educational reforms in conjunction with an established, outside, state-approved entity that possesses the technical expertise to build capacity in teaching and learning. There are alternative outside entities that could be enlisted to provide this support for academic improvement. Among them, I believe that a coordinated state effort to develop this capacity in Michigan's intermediate school districts is the most promising.

#### Financial Emergency School District Improvement Plan

The Committee recommends that Act 72 (MCL 141.1240) be amended to require a local school district to develop, maintain, and submit a Financial Emergency School District Improvement Plan ("SDIP") during the appointment of an EFM. Under a SDIP, the local board would be required to develop a school district improvement plan, and recommend a budget for the plan. The process of the school board developing the SDIP would take place in open meetings, allowing the necessary input from the parents, teachers, and local community.

The opportunity for the local school board to develop the academic/school improvement plan is a fair and rational recommendation when reviewing school board requirements under the RTTT legislation. Under RTTT (MCL 380.1280c) the school board of each school identified as one of the lowest achieving 5% has 90 days to submit a redesign plan to the Reform/Redesign Officer. The redesign plan is developed with input from the local teacher bargaining unit, the local superintendent, or an EFM, if one is in place.

The SDIP would be similar to redesign plans under RTTT. It will be developed by the local school board, with input from the local community. After formulating a plan, the school board would be required to submit it to the EFM.

The ISDs would be required to assist both parties in submitting the final SDIP plan. Intermediate School Districts are service agencies that can provide technical expertise in creating a school improvement plan, a service that ISDs regularly provide to local school districts, while also working with the EFM to create a budgetary framework for the plan. Intermediate School Districts are also capable of the inverse - reviewing a budgetary plan of the EFM, and then working with the board to formulate a school improvement plan within those financial constraints.

Overall, the goal would be for the ISD to strengthen the communication and relationship between the EFM and the school board, while also facilitating the long term effects of the SDIP after the financial emergency is resolved. All three parties must work together to submit a properly funded SDIP that appropriately addresses the educational and financial needs of the pupils within that district. All three parties would be required to sign off on the SDIP, and any amendments.

### **III. AMEND ACT 72 TO INCORPORATE THE SDIP INTO THE EFM WRITTEN FINANCIAL PLAN, WITH QUARTERLY PROGRESS REPORTS.**

Lastly, because the SDIP will be an integral part of the financial framework for the school district, the Committee recommends that Act 72 (MCL 141.1240) be amended to incorporate the SDIP in the written financial plan for EFMs. The Committee recommends that the EFM be required to submit quarterly reports of the written financial plan, which will include progress reports on the SDIP. Please see question 3 for detailed recommendations to EFM reporting requirements.

## Education Subcommittee on Academic Emergencies

Policy Recommendations- June 27, 2010

State Representative David E. Nathan, Chair

Committee members: Rep. Lisa Brown, Rep. Tim Bledsoe, Rep. Justin Amash, Rep. Phillip Pavlov

### QUESTION 3

**What level of oversight and accountability should pertain to academic managers or financial managers?**

**Short Answer.** Criteria should be developed by the legislature to create greater transparency and oversight, as well as hold Emergency Financial Managers ("EFMs") more accountable for reporting requirements. The Education Subcommittee on Academic Emergencies ("the Committee") finds that the supervisory structure of school district EFMs is vague under the Local Fiscal Responsibility Act (Act 72 of 1990). Accordingly, the Committee recommends that Act 72 be amended to require school district EFMs to serve at the pleasure of an Education Financial Emergency Resolution Board ("ERB"). The ERB would be structured similar to the Emergency Loan Board ("ELB") currently in place for local government EFMs. The ERB will be chaired by the State Superintendent, but will also include of the State Treasurer and Director of Technology, Management & Budget, who are both on the ELB. Having the State Treasurer and Director of Management & Budget supervise all EFMs in the state will provide greater consistency and congruency in EFM oversight. The Committee further recommends the following amendments to Act 72 in order to provide greater transparency and oversight of EFMs: 1) quarterly reporting for written financial plans; 2) incorporate the School District Improvement Plan ("SDIP") into the EFM written financial plan; 3) reporting requirements for all EFMs in the state to be on a date certain, every six (6) months; 4) the written financial plan/deficit reduction plan to be included with the six (6) month reporting requirements; and 4) mandatory contractual provisions specifying state remedies for lack of compliance with EFM reporting requirements.

NOTE: Based on the Committee's recommendations for Question 1, the following recommendations only apply to emergency financial managers, and not academic managers.

## RELEVANT STATUTORY PROVISIONS

### APPOINTMENT AND SUPERVISION OF EFMS

#### School Districts (MCL 141.1238)

1. If the superintendent of public instruction determines...that a school district has a financial emergency, the superintendent of public instruction, within 30 days after that determination, shall submit to the state board the names of nominees who

- shall be considered for appointment to serve as an emergency financial manager for the school district.
2. From the list of nominees submitted to the state board, the state board shall submit to the governor the names of not more than three (3) nominees who shall be considered for appointment to serve as an emergency financial manager for the school district.
  3. From the list of nominees submitted to the governor, the governor shall appoint, with the advice and consent of the senate, an emergency financial manager for the school district who shall hold office for a term fixed by the governor, but not to exceed one (1) year.
  4. The appointment shall be by written contract and may be renewed on an annual basis for not more than one (1) year...an emergency financial manager shall receive compensation and reimbursement for actual and necessary expenses from the school district as approved by the superintendent of public instruction.
  5. In addition to staff otherwise authorized by law, with the approval of the superintendent of public instruction, the emergency financial manager may appoint additional staff and secure professional assistance considered necessary to implement this article.

#### **Local Government (Section 141.1218)**

1. If the governor determines that a financial emergency exists...the governor shall assign the responsibility for managing the local government financial emergency to the local emergency financial assistance loan board...
2. The local emergency financial assistance loan board shall appoint an emergency financial manager...
3. The emergency financial manager shall serve at the pleasure of the local emergency financial assistance loan board.
4. The emergency financial manager shall be entitled to compensation and reimbursement for actual and necessary expenses from the local government as approved by the local emergency financial assistance loan board.
5. In addition to staff otherwise authorized by law, with the approval of the local emergency financial assistance loan board, the emergency financial manager may appoint additional staff and secure professional assistance considered necessary...

#### **WRITTEN FINANCIAL PLANS AND REPORTING BY EFMS**

##### **School District (MCL 141.1240)**

1. In consultation with the school board, the emergency financial manager shall develop, and may from time to time amend, a written financial plan for the school district. The financial plan shall provide for both of the following:
  - a. Conducting the operations of the school district within the resources available according to the emergency financial manager's revenue estimate.

- b. The payment in full of the scheduled debt service requirements on all bonds and notes of the school district and all other uncontested legal obligations.
- 2. After the initial development of the financial plan required by subsection (1), the emergency financial manager in consultation with the school board shall regularly reexamine the plan, and if the emergency financial manager reduces his or her revenue estimates, he or she shall modify the financial plan to conform to revised revenue estimates.
- 3. The financial plan shall be in a form, and shall contain that information for each year the plan is in effect, that the school district's emergency financial manager specifies.
- 4. The emergency financial manager shall make public the plan or modified plan. This subsection shall not be construed to mean that the emergency financial manager must receive public approval before he or she implements the financial plan or any modification to the plan.

**Local government (MCL 141.1220)**

- 1. In consultation with the local government, the emergency financial manager shall develop, and may from time to time amend, a written financial plan for the local government. The financial plan shall provide for both of the following:
  - a. Conducting the operations of the local government within the resources available according to the emergency financial manager's revenue estimate.
  - b. The payment in full of the scheduled debt service requirements on all bonds and notes of the local government and all other uncontested legal obligations.
- 2. After the initial development of a financial plan, the plan shall be regularly reexamined by the emergency financial manager in consultation with the local government, and if the emergency financial manager reduces his or her revenue estimates, the emergency financial manager shall modify the financial plan to conform to revised revenue estimates.
- 3. The financial plan shall be in a form and shall contain that information for each year during which year the financial plan is in effect that the local emergency financial manager specifies.
- 4. The emergency financial manager shall make public the plan or modified plan. This subsection shall not be construed to mean that the emergency financial manager must receive public approval before he or she implements the financial plan or any modification of the plan.

**Six (6) Month Reporting (MCL 141.1241a and MCL 141.1221a)**

Requires an emergency fiscal manager appointed by the governor to produce a report every six months for the Governor, Senate Majority Leader, and Speaker of the House. The report shall include:

1. A description of each expenditure made, approved, or disapproved during the reporting period that had a value of \$10,000 or more, and the source of the funds.
2. A list of each contract that the emergency financial manager awarded or approved with a value of \$10,000 or more, the purpose of the contract, and the identity of the contractor.
3. A description of each loan sought, approved, or disapproved during the reporting period that had a value of \$10,000 or more and the proposed use of the funds.
4. A description of any new position created or any vacancy in a permanent position filled by the appointing authority.
5. A description of any position that has been eliminated from which an employee has been laid off.

## **COMPLIANCE**

### **School Districts (141.1243)**

1. The superintendent of public instruction; the department of education; and the school board, administrators, and employees of a school district that has a financial emergency shall provide the assistance and information considered necessary and requested by the emergency financial manager in the effectuation of his or her powers and duties under this article.
2. The school board shall comply with orders issued by the emergency financial manager and may take those actions necessary to comply with this article and as may be prescribed by the review team, the superintendent of public instruction, or the emergency financial manager in implementing this article.

### **Local Government (141.1224)**

1. Elected officials of a local government shall provide the assistance and information necessary and properly requested by a review team, the local emergency financial assistance loan board, or the emergency financial manager in the effectuation of their duties and powers and of the purposes of this article.
2. Failure of an elected official of a local government to abide by this article shall be considered gross neglect of duty, which the emergency financial manager shall report to the local emergency financial assistance loan board. Following review and a hearing with the local government elected official, the local emergency financial assistance loan board may recommend to the governor that the governor remove the elected official from office. If the governor removes the elected official from office, the resulting vacancy in office shall be filled as prescribed by law.

**ACT 72 SUMMARY OF EFM APPOINTMENT, SUPERVISION & REPORTING REQUIREMENTS**

	<b>School District</b>	<b>Local Government</b>
Determination of Financial Emergency and EFM Appointment	Superintendent determines financial emergency, and submits names of nominees to state board; State board submits up to three (3) names to Governor; Governor appoints EFM with consent from the Senate.	Governor determines financial emergency, then assigns appointment to the emergency loan board.
Supervision	Fixed term, written contract, not to exceed one (1) year; May be annually renewed.	EFM serves at the pleasure of Emergency Loan Board (ELB).
Compensation, Reimbursements, Staff & Appointments	Superintendent approves compensation and reimbursement; Superintendent approves EFM staff and appointments.	ELB approves compensation and reimbursement; ELB approves EFM staff and appointments.
Reporting	Written financial plan in consultation with the school board. Must be made public.  EFM must submit reports every 6 months, and post on website.	Written financial plan in consultation with the local government. Must be made public.  EFM must submit reports every 6 months, and post on website.
Compliance	No compliance mandates for EFM	No compliance mandates for EFM

**APPOINTMENT AND SUPERVISION OF EFMS**

The Committee received testimony from numerous individuals, in addition to gathering research articles, criticizing the oversight, or lack thereof, of state officials over school district EFMs (see attachments). It was also evident that people have conflicting viewpoints over how school district EFMs are appointed and supervised.

After review of Act 72, there are distinct differences between the appointment and supervisory language of school district EFMs versus local government EFMs that may lead to some of the confusion. **Local government EFMs** are appointed by the local emergency financial assistance loan board (Emergency Loan Board "ELB"), which consists of the State Treasurer, the director of the Department of Energy, Labor and Economic Growth, and the director of the Department of Management and Budget (now known as the Department of Technology, Management & Budget). This board is created under the Municipal Loan Act (Act 243 of 1980), and accordingly, only applies

to local governments. Act 72 states that local government EFMs “serve at the pleasure” of the ELB. The ELB also approves compensation and appointments of local government EFMs. Act 72 does not specify a fixed term or yearly contractual agreements for local government EFMs.

**School District EFMs** are appointed by the Governor, with consent of the Senate, after the Governor receives three (3) names from the state school board. Act 72 does not specify that school district EFMs “serve at the pleasure” of any particular classification; however it does specify that the state superintendent approves compensation and appointments made by the EFM. Also distinct from local government EFMs, school district EFMs are subject to annually renewable contracts.

The overriding difference in how local government EFMs and school districts EFMs are appointed and supervised, is that that local government EFMs report to the ELB, which includes chief financial officers for the state (treasurer and budget director). The ELB has selected all but one EFM for the state.

#### **RECOMMENDATION:**

The Committee recommends that Act 72 (MCL 141.1238) be amended to require school district EFMs “serve at the pleasure” of a three (3) person board, similar to the ELB. The current statutory language is vague and does not properly identify a supervisory structure for school district EFMs versus local government EFMs. Establishing clear and consistent supervision will assist in the oversight process.

School district EFMs are required to have “competence in fiscal matters” when appointed (see Question 4 for more details). Accordingly, it is the Committee’s recommendation that, like local government EFMs, school district EFMs be supervised by the State Treasurer and director of the Department of Technology, Management & Budget. Both directors possess specialized knowledge in fiscal matters. Furthermore, these directors currently supervise all local government EFMs in the state. Having the same directors for all EFMs will create consistency and congruency in the oversight process.

The Committee also acknowledges that the state superintendent must remain involved in the process. Although the statutory language is not specific, school district EFMs are supervised by the state superintendent in many respects.

#### Education Financial Emergency Resolution Board (ERB)

The Committee recommends that Act 72 be amended to create an Education Finance Emergency Resolution Board (ERB), comprised of the State Superintendent, the State Treasurer, and the director of the Department of Technology, Management & Budget. The role of the ERB, chaired by the State Superintendent, would be to directly supervise

the school district EFMs, approve compensation, reimbursements, appointments, review contracts or contracting practices and decisions of the EFM or his/her staff. All written plans and reporting requirements of the EFM would be submitted to the ERB.

The Committee further recommends two, non-voting, advisory members of the ERB: the Attorney General (or designee), with the sole purpose of providing counsel to the ERB, and the president of the local school board.

Having school district EFMs report to the ERB would provide substantial improvement to the current oversight process and accountability structure. Most notably, like the ELB, the ERB would be subject to the Open Meetings Act. Overall, ERB would provide greater transparency for the local school district or general public to monitor EFM appointments and the oversight process.

### **WRITTEN FINANCIAL PLANS, REPORTING REQUIREMENTS AND COMPLIANCE OF EFMS**

Act 72 (MCL 141.1240) does not currently specify a deadline for EFMs to submit their written financial plans, nor does it specify to whom the plan shall be submitted. Possibly, EFM contracts contain proper instruction and deadlines for the written financial plan. But currently there is no statutory oversight for written financial plans.

Act 72 was recently amended to require specific reporting requirements every six (6) months, in addition to the written financial plan. The reports must be submitted to the Governor, Senate Majority Leader and Speaker of the House. The amendment became effective December 15, 2009; therefore no EFM reports have been due in accordance with the provisions.

The Committee received several comments regarding the lack of oversight and transparency of actions taken by the EFM. Subcommittee members consistently asked our guest speakers how the legislature could improve the oversight of EFMs and ensure that the state's agenda and goals are implemented by the EFM. On April 15, 2010, the Committee received testimony from Jan Lazar, former Assistant EFM in Highland Park. Ms. Lazar responded:

I think Legislative parameters of expectations and defined criteria, goals and accomplishments should be established. Local input is essential but you have to be careful not to rely on the locals for accountability of the EFM. [The legislature] has the ability to set the criteria for the Governor to hold the EFM accountable. There are no accountability provisions for EFMs.

The Committee agrees with Ms. Lazar that the state has not sufficiently adopted accountability standards for EFMs. School district EFMs, in particular, have a profound task of balancing the budget, while also balancing the educational needs of the pupils within that district. The state has the responsibility of ensuring that EFMs are accomplishing their own goals, the state's goals, while also satisfying the educational needs for that district.

#### **RECOMMENDATION:**

The Committee recommends the following amendments to Act 72, as it relates to written financial plans and reporting requirements of EFMs:

- 1. Quarterly reporting for written financial plan.** (MCL 141.1240) The written financial plan for the EFM is a critical component of assessing the existence of a financial emergency within a school district, in addition to monitoring whether the EFM is meeting his or her own benchmarks for financial solvency. The Committee finds Act 72 (MCL 141.1240) to be unnecessarily vague, given the importance of the written financial plan. Accordingly, the Committee recommends that EFM contracts have provisions requiring written financial plans to be submitted quarterly to the ERB, including detailed updates on the state of the financial emergency within the district.
- 2. Incorporate the SDIP into the EFM Written Financial Plan.** (MCL 141.1240) As discussed in greater detail in the Committee's recommendations for Question 2, the proposed "Financial Emergency School District Improvement Plan" (SDIP) will be an integral part of the financial framework for the school district. The Committee recommends that Act 72 be amended to incorporate the SDIP in the written financial plan for EFMs.
- 3. Require the written financial plan/deficit reduction plan to be included with EFM reporting requirements to state officials.** (MCL 141.1241a and 141.1221a) As discussed above, Act 72 does not specify much detail regarding the EFM's written financial plan. Given the vital importance of the plan, the Committee recommends that the EFM's written financial plan also be included in the six (6) month reporting requirements to the Governor, Senate Majority Leader and Speaker of the House. This measure would create greater awareness for all state officials in monitoring the actions taken by the EFM and the status of the financial emergency within the district.
- 4. Require all EFMs to report on a date certain, "every 6 months."** (MCL 141.1241a and 141.1221a) Because of the varying appointments of EFMs, the Committee recommends that all EFMs in the state report on the same date, every six (6) months (e.g., June 1 and December 1). This requirement would create uniformity, as well as

greater transparency for the local community and better oversight for state officials. Most notably, having all EFMs report on the same date will create greater awareness of EFM plans and the status of the financial emergency within the district.

- 5. Mandatory provisions for EFM contracts.** Act 72 (MCL 141.1243 and MCL 141.1224) details specific compliance requirements for school district officials and local government officials with EFM orders. Act 72 also requires various reporting requirements for EFMs. However, the Act does not specify administrative or legislative remedies for non-compliance by EFMs. The Committee recommends that all EFM contracts have provisions to ensure that EFMs comply with the state's goals for the district and the EFM's reporting requirements. Mandating contractual provisions for EFM contracts provides additional oversight and accountability for EFMs, but also gives the administration discretion to draft specific language, dates, and supervise day-to-day operations. The Committee does not recommend any specific language at this time. However, the Committee is recommending that all EFM contracts include state remedies for non-compliance with reporting requirements, such as written warnings or terminating the contract within a specified period of time.

**PROPOSED ACT 72 SUMMARY OF EFM APPOINTMENT, SUPERVISION & REPORTING REQUIREMENTS**

	<b>School District</b>	<b>Local Government</b>
Determination of Financial Emergency and EFM Appointment	Superintendent determines financial emergency, and submits names of nominees to state board; State board submits up to three (3) names to Governor; Governor appoints EFM with consent from the Senate.	Governor determines financial emergency, then assigns appointment to the emergency loan board.
Supervision	Fixed term, written contract, not to exceed one (1) year. May be annually renewed. <i>EFM serves at the pleasure of the ERB.</i>	EFM serves at the pleasure of ELB.
Compensation, Reimbursements, Staff & Appointments	<del>Superintendent</del> <i>ERB</i> approves compensation and reimbursement; <del>Superintendent</del> <i>ERB</i> approves EFM staff and appointments	ELB approves compensation and reimbursement; ELB approves EFM staff and appointments
Reporting	Written financial plan in consultation with the school board. <i>Quarterly status reports on written financial plan to ERB. Must include SDIP. Must be made public.</i>  EFM must submit report every six (6) months, <i>on a date certain. Report must include written financial plan.</i> Must be posted on website.	Written financial plan in consultation with the local government. <i>Quarterly status reports on written financial plan to ELB. Must be made public.</i>  EFM must submit reports every 6 months, <i>on a date certain. Report must include written financial plan.</i> Must be posted on website.
<b>Mandatory Contractual Provisions</b>	<i>Remedies for non-compliance with state goals and EFM reporting requirements</i>	<i>Remedies for non-compliance with state goals and EFM reporting requirements</i>

*\*bold italicized = recommended amendments*





JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING

May 7, 2010



MICHAEL P. FLANAGAN  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION

**MEMORANDUM**

TO: State Board of Education

FROM: Michael P. Flanagan, Chairperson

SUBJECT: State and Federal Legislative Update

**State Update**

FY 2011 Budgets

The House Subcommittee on K-12 Education continues its work on the Michigan Department of Education and School Aid budgets (SBs 1154 and 1163, respectively). At this point, action by the subcommittee is expected in mid-May.

The Consensus Revenue Estimating Conference is May 14 and that will play a key role in how the budgets are developed from that point on. Depending on how revenues are doing, that may dictate more cuts or show additional revenues that may be used in the debate over what additional revenues and reforms are needed for schools.

SB 757 – Curriculum – Senator Kahn

Senate Bill 757 passed both chambers overwhelmingly (104-3/32-3) and has been sent to the Governor. This bill makes some minor adjustments to the educational plan required of students and allows students with a Personal Curriculum modification to take Statistics or Data and Function Analysis in place of Algebra II. Keep in mind that there was a time that the content from those two “new” courses was included in the content for Algebra II. Schools wanted to continue to have that flexibility to teach that content for children in need of a modification.

Finance Issues before House Education Committee

The House Education Committee is looking at several finance bills related to capping superintendent salaries, limiting school district general fund balances, and retirement reforms, etc. The debate on this has been contentious and continues. Even as of today, the Governor and House and Senate leadership have been negotiating to try to find a compromise.

**STATE BOARD OF EDUCATION**

KATHLEEN N. STRAUS – PRESIDENT • JOHN C. AUSTIN – VICE PRESIDENT  
CAROLYN L. CURTIN – SECRETARY • MARIANNE YARED MCGUIRE – TREASURER  
NANCY DANHOF – NASBE DELEGATE • ELIZABETH W. BAUER  
REGINALD M. TURNER • CASANDRA E. ULBRICH

608 WEST ALLEGAN STREET • P.O. BOX 30008 • LANSING, MICHIGAN 48909  
www.michigan.gov/mde • (517) 373-3324

## **State Board of Education Legislative Committee**

On April 26, 2010, the Legislative Committee of the State Board of Education met. Representative of the Education Alliance were also in attendance. They discussed several bills and made recommendations to the full Board as follows.

### Anti-bullying – HB 4580/SB 275 (Rep. Byrnes and Senator Jelinek, respectively)

The Legislative Committee recommends to the full Board that the Board support the anti-bullying legislation as introduced. This legislation requires local districts to create a policy on anti-bullying and includes requirements on the policy's content. While this legislation does not include any enumeration of groups to be protected (like the State Board of Education model policy), it does include language ensuring that addresses conduct that is reasonably perceived to be motivated by animus or by an actual or perceived characteristic. There was an amendment being considered by the Legislature to remove that language, rendering the bill toothless. The Legislative Committee of the SBE did not support that amendment and thus recommends supporting the bill as introduced.

Since the time of the Legislative Committee, the House Education Committee defeated that amendment and reported the bill to the floor as introduced with bipartisan support (Yeas: Reps. Melton, Lisa Brown, Bledsoe, Byrum, Corriveau, Haase, Kennedy, Lindberg, Nathan, Polidori, Roberts, Sheltroun, Valentine, Ball, Tyler and Walsh; Nays: Reps. Pavlov, Amash and McMillin). The bill is expected to pass this House the week of May 10<sup>th</sup>.

### Shared Superintendents between Intermediate School Districts and Local Districts – HBs 6008, 6009, and 6010 (Reps. Brown, Lahti and Lahti, respectively)

The Legislative Committee recommends to the full Board that the Board support the shared superintendent legislation. This legislation would allow an intermediate school district superintendent to also serve simultaneously as a local school district superintendent. This goes along with much of the focus on consolidation of services and budget cutbacks. The Department staff raised some questions about how this would work for pupil accounting and for decisions on funding between local districts and as the shared superintendent may have a conflict of interest. The Legislature is looking for ways to address those concerns.

### Revisions to Public Act 72 of 1990 – legislation yet to be introduced

The Legislative Committee recommends to the full Board that the full Board recommend to the Legislature that Public Act 72 be amended to clarify (1) the role of the Michigan Department of Education as it relates to the roles and responsibilities of Emergency Financial Managers, (2) the role of Emergency Financial Managers between academic and fiscal responsibilities, (3) that the Michigan Department of Education focus on its role with academics and deficit elimination plans, (4) that the Michigan Department of Treasury has responsibility for oversight of Emergency Financial Managers.

This follows the discussion about the need to further clarify PA 72 that if an Emergency Financial Manager is appointed for a district, the roles, focus, and oversight responsibilities are clear.

## **Federal Update**

### Elementary and Secondary Education Act (ESEA)

As you know, the discussion has begun on the reauthorization of the Elementary and Secondary Education Act (ESEA). The U.S. House and Senate Committees that cover education continue to hold hearings and the plan remains to finish work on this by August of this year.

I hope this information is helpful to you. If you have any questions or concerns regarding these or other legislative issues, please contact Lisa Hansknecht, Director of the Office of State and Federal Relations, 517-335-4913.

**It is recommended that the State Board of Education (1) support House Bill 4580 and Senate Bill 275 (anti-bullying) as introduced, (2) support House Bills 6008, 6009, and 6010 (shared superintendent between intermediate school districts and local districts); and (3) recommend to the Legislature that Public Act 72 be amended to clarify (a) the role of the Michigan Department of Education as it relates to the roles and responsibilities of Emergency Financial Managers, (b) the role of Emergency Financial Managers between academic and fiscal responsibilities, (c) that the Michigan Department of Education focus on its role with academics and deficit elimination plans, (d) that the Michigan Department of Treasury has responsibility for oversight of Emergency Financial Managers.**





**MEMORANDUM**  
**DETROIT BOARD OF EDUCATION**

**TO: Employees of the Detroit Public Schools**

**FROM: Otis Mathis, President** *OM*

**DATE: May 20, 2010**

**SUBJECT: GOVERNOR'S SELECTION OF EMERGENCY FINANCIAL MANAGERS**

The case in Highland Park, Michigan regarding the Emergency Financial Manager, raises questions about how carefully Governor Jennifer Granholm selects and oversees the people she's given broad powers to run financially troubled communities.

"We pay people in the Treasury to provide that oversight and they didn't", said John Chamberling, a professor at the University of Michigan's Gerald R. Ford School of Public Policy. This ought to make people cautious for a good long while.

In the wake of the scandal surrounding the Highland Park Emergency Financial Manager, Treasury officials announced new controls designed to increase scrutiny of emergency financial managers.

With a growing number of communities and school districts across Michigan who are struggling financially, the Highland Park case raises concerns about the state Treasury's ability to monitor financial managers, who are given sweeping powers to run communities and school districts. Experts say that staff cuts in the Treasury Department, combined with overreliance on the managers, can be dangerous.

Chief Economist for the Michigan Senate Fiscal Agency and a former Michigan State University professor of state and local government, Eric Scorsone stated, regarding the Highland Park situation, "It's a warning sign for us that we better be careful going forward", and added, "If we're going to do this, we need to make sure they (Emergency Financial Managers) are properly supervised."

On the day that Governor Granholm named a replacement for Highland Park; Treasury officials announced new measures to increase oversight of financial managers – including more stringent reporting on how managers spend school district funds.

The Detroit Public Schools' Emergency Financial Manager (EFM), appointed by the governor, has the power to hire and to fire.

The following language is taken from the contract of the Inspector General.

"This agreement between the School District of the City of Detroit and the Executive shall become effective only after the approval of the Emergency Financial Manager for the School District of the City of Detroit.

The Executive shall be employed by the district in the position of Inspector General and shall report directly to the District's Emergency Financial Manager.

This agreement will expire on its ending date unless extended or renewed in writing signed by both the Executive and the Emergency Financial Manager.

The responsibilities of the Executive shall be consistent with the duties of the Inspector General as established by the Emergency Financial Manager, and may include additional, alternate, revised or reassigned duties and responsibilities within the sole discretion of the Emergency Financial Manager.

The Executive primary responsibilities will be outlined in a job description approved by the Emergency Financial Manager or designee. The Executive shall follow the directions of the Emergency Financial Manager in performing the Executive's assigned duties and responsibilities.

The Executive's title or classification shall not prevent the Emergency Financial Manager from reassigning or otherwise revising Executives duties or responsibilities . . . .

The Emergency Financial Manager or designee may terminate this agreement without cause at any time during the term of this agreement or any extension thereof.

The Executive may be terminated with cause at the sole discretion of the Emergency Financial Manager.

The Executive understands that during the course of his/her employment he/she will have access to confidential information. District employees shall not discuss or disclose confidential information with others, except as previously authorized by the Emergency Financial Manager or designee.

The Emergency Financial Manager and Executive shall establish annual written performance objectives, and the Emergency Financial Manager shall provide Executive with an annual performance evaluation based on the stated objectives.

The duties of the Auditor General as well as the Inspector General are limited and controlled by the Emergency Financial Manager. The accounting, investigation as well as the reporting of the district's funds to the Detroit Board of Education or the public, therefore is limited to the discretion of the Emergency Financial Manager, which is a conflict of interest.

The past history of Emergency Financial Managers appointment by the governor with little or no oversight has created an atmosphere of intimidation within Detroit Public Schools' with employees, consultants and vendors. The Board, therefore, is requesting that any knowledge of abuse or illegal activity be reported to the Board Office, Board Member and/or the Inspector General.

Your report will be protected under the Whistle Blowers Act, which states:

***AN ACT to provide protection to employees who report a violation or suspected violation of state, local, or federal law; to provide protection to employees who participate in hearings, investigations, legislative inquiries, or court actions; and to prescribe remedies and penalties.***

The Board adheres to the law in protecting your rights. TELL DON'T GO TO JAIL.

/wg

Attachment (1)

xc: Elected Officials  
Board Members  
Teresa N. Gueyser, Esq.



The Blackwell case raises concerns about the state Treasury's ability to monitor financial managers who are given sweeping powers to run financially troubled communities, the Free Press reported. Since the scandal, Treasury officials have announced new controls designed to increase scrutiny of emergency financial managers.

"We pay people in Treasury to provide that oversight and they didn't," said John Chamberlin, a professor at the University of Michigan's Gerald R. Ford School of Public Policy. "This ought to make people cautious for a good long while."

© 2010 MLive.com. All rights reserved.

## Education Subcommittee on Academic Emergencies

### Policy Recommendations- June 27, 2010

State Representative David E. Nathan, Chair

Committee members: Rep. Lisa Brown, Rep. Tim Bledsoe, Rep. Justin Amash, Rep. Phillip Pavlov

#### QUESTION 4

**Should Emergency Financial Managers or Academic Managers have prior background or a proven track record in their appointed position?**

**Short Answer.** Yes. Emergency Financial Managers ("EFMs") should have prior background or a proven track record in their appointed position. The Local Government Fiscal Responsibility Act (Act 72 of 1990) currently requires "competence" for both local government and school district EFMs. The section for school district EFMs specifically requires "competence in fiscal matters." Based on research and testimony received, the Subcommittee on Academic Emergencies ("the Committee") recommends that Act 72 be amended to define "competence in fiscal matters." The definition should include criteria such as knowledge of budgeting and accounting principles, the ability to monitor, manage and create fiscal data, and the ability prepare budgets, plans and accounting systems appropriate for a school district. The definition should also include the requirement that EFMs have experience in public sector financial operations (e.g., finance director, comptroller, budgeting). At this time, the Committee does not recommend that EFMs have any particular education background, credentials, or residency requirements.

NOTE: Based on the Committee's recommendations for Question 1, the following recommendations only apply to EFMs.

#### RELEVANT STATUTORY PROVISIONS

**School District (MCL 141.1238).** The emergency financial manager shall be chosen solely on the basis of his or her competence in fiscal matters and shall not have been either an elected or appointed official or employee of the school district for which he or she is appointed for not less than 5 years before the appointment. The emergency financial manager shall not be the superintendent of public instruction. The emergency financial manager need not be a resident of the school district for which he or she is appointed.

**Local Government (MCL 141.1218).** The emergency financial manager shall be chosen solely on the basis of his or her competence and shall not have been either an elected or appointed official or employee of the local government for which appointed for not less than 5 years before the appointment. The emergency financial manager need not be a resident of the local government for which he or she is appointed.

## "COMPETENCE" REQUIREMENT

Act 72 (MCL 141.1238) currently requires school district EFMs be chosen solely based on his or her "competence in fiscal matters," and not have been an elected or appointed official or an employee of the school districts within five (5) years of the appointment. The Committee notes that the local government provision only mandates "competence" and not "competence in fiscal matters" as selection criteria for EFMs.

According to the Legislative Services Bureau, a search of Michigan statutes reveals numerous uses of the terms "competence" and "competency." However, neither are defined in Michigan law. On March 11, 2010, the Committee received testimony from Lisa Hansknecht, legislative liaison for the Michigan Department of Education. After being asked how many people have a proven track record to do financial or academic reform, she noted, "the legislation discusses having competence and experience, but it does not discuss specific criteria because it's so rare."

The states of North Carolina and Washington have defined financial competencies, as it relates to job performance:

### North Carolina

The Department of Health and Human Services for North Carolina evaluates "competencies" in a financial job performance as:

- **Knowledge-Technical-** Knowledge of technical accounting, including the maintenance and reporting of financial accounting data. Ability to remain current in developments and trends in the area of assignment.
- **Financial Program Monitoring and Management-** Ability to observe monitor, collect, and record fiscal data. Ability to assess the accuracy, validity, and integrity of data. Ability to coordinate and administer fiscal program activities and protocols. Ability to manage resources, monitor activities, and assess risks and quality control associated with the program. Ability to prepare documentation and create financial reports.

### Washington

Washington defines "fiscal accountability" as someone who "follows fiscal guidelines, regulations, principles, and standards when committing fiscal resources or processing financial transactions." In Washington, performance statement examples for fiscal accountability include:

- Handling currency carefully and attentively. Verifying the authenticity of money, recognizing when it is suspect, and taking action to confirm its value before completing any transactions.
- Safeguarding fiscal resources and adhering to all internal control procedures designed to prevent and detect theft or misuse of funds. Remaining alert to security breaches and reporting problems. Seeking ways to improve internal controls.
- Keeping current on fiscal procedures, principles, standards, rates, etc. Ensuring all financial data is properly calculated and reported.
- Responsibly allocating and accounting for the use of fiscal resources, weighing alternatives and their benefits. Monitoring budget usage and ensuring critical costs are covered. Seeks ways to reduce costs.

### **RECOMMENDATION:**

The Committee recommends that Act 72 be amended to define "competence in fiscal matters," in order to provide the skills necessary to resolve a financial emergency within a school district (or local government). After reviewing the various definitions for North Carolina and Washington, there are differences in having technical fiscal skills (accounting, auditing) versus having managerial fiscal skills (assessing, monitoring). The Committee acknowledges that EFMs currently have the ability to hire staff with technical or specialized skills in particular areas. However, EFMs should also have the ability to supervise the staff that he or she appoints, which requires some knowledge of fiscal procedures, principles, budgeting, etc.

"Competence in fiscal matters" should be defined in order to establish the skill set that EFMs are expected to have, versus his or her professional staff. Emergency Financial Managers should be qualified to:

- Prepare and analyze a budget appropriate for a school district and size of the district.
- Review and create bookkeeping and accounting systems appropriate for a school district and size of the district.
- Create a deficit reduction plan appropriate for a school district and size of the district.
- Take actions in accordance with the Uniform Budgeting and Accounting Act (Act 2 of 1968) and Generally Accepted Accounting Principles (GAAP).
- Review and create profit and profit-loss statements, balance sheet statements, cash flow analyses, cash receipts journals, accounts payable, general ledgers, etc.

### Public Sector Financial Experience

An EFM should not only be qualified to review and analyze fiscal data, he or she should also be competent in fiscal matters within the public sector. The Committee recognizes the distinction between competency in fiscal matters, and competency in fiscal matters

within the public sector. On April 15, 2010, the Committee received the following testimony from Jan Lazar, former Assistant EFM of Highland Park, when asked about the backgrounds of EFMs:

An EFM needs to know finance, but he or she needs to know government finance because it's a completely different set of rules than in the private sector. If an EFM does not understand government accounting vs. non-governmental accounting, he or she is severely handicapped and will run into trouble, as most of them have. Government finance is rarely taught. [The EFM] must have specialized, hands-on experience in government accounting to understand the rules. [The state] needs to appoint someone who understands the differences.

The Committee agrees with Ms. Lazar that EFMs should be required to have direct experience in public sector financial operations because of the vast differences in the accounting principles and restricted uses of funds. In the private sector, it is the decision of the corporation to manage and transfer funds. Public sector finance is much more restrictive.

Any school district with a financial emergency should be appointed an EFM who is able to hit the ground running with financial plans and management. Emergency Financial Managers should be qualified to understand the differences between the laws and principles that govern public sector finance, versus private sector finance. The Committee recommends that for the purposes of Act 72 (MCL 141.1238), "competence in fiscal matters," be defined to include experience in public sector finance, budgeting, accounting, comptroller, treasurer or related functions. The EFM should have experience with laws such as the "Uniform Budgeting and Accounting Act," and his or her experience should be direct, and not as a policy making, member of a deliberative body (Councilperson, Commissioner, etc.).

#### **EDUCATION, OCCUPATION AND RESIDENCY BACKGROUND OF EFMS**

The only other background requirement of Act 72 (MCL 141.1238) is that the EFM not be an elected or appointed official within the school district within five (5) years of the appointment. At this time, the Committee does not recommend amending this provision. The Committee does note, however, that the current language permits the appointment of elected officials, outside of the district, as EFM. Although no direct conflict exists in this regard, it is not recommended for the administration to appoint any EFM with the propensity to politicize the position.

The Committee also notes that Act 72 has no requirements for backgrounds within a school district (educator, school administrator, etc.), education credentials

(baccalaureate, masters, CPA, etc.). At this time, the Committee does not recommend imposing additional background requirements for school district EFMs. However, the Committee strongly suggests that the administration seek EFM candidates who have some familiarity with school district operations, preferably within the district that he or she is appointed.

In the absence of Act 72 requiring any background within a school district, education credentials, or residency requirements, it is even more necessary that an EFM have direct work experience within public sector finance. Again, a school district with a financial emergency should have an EFM appointed who is qualified to hit the ground running.

## EFM BACKGROUNDS PRIOR TO APPOINTMENT

The following research has been gathered on EFM backgrounds and appointments. Note that the Committee included local government EFM's, since the vast majority of EFM appointments have been to local government.

Emergency Financial Manager	City	General Background	Public Sector Experience?	Public Sector Finance?	Appointment
Ramona Henderson Pearson	Highland Park	CPA/MBA, Wayne County Auditor General	Yes	Yes	Engler 2002-2005
Art Blackwell	Highland Park	Government and Business; Wayne County Bd. Of Commissioners	Yes	No	Granholm 2005-2009
Louis Schimmel	Ecorse (Receiver); Hamtramck (EFM)	Board of Directors, Pontiac State Bank; Waterford School Board	Yes	No	Wayne County Circuit Court (1986-1990)  Engler (2000)
Ed Kurtz	Flint	President & CEO, Baker College (1968-2002)	No	No	Engler 2002-2004
Pamela Amato	Village of Three Oaks	Attorney; MBA; medical technologist	No	No	Granholm 2008-2009
Robert Bobb	Detroit (DPS)	Masters Business; School Board; City Manager; Deputy Mayor	Yes	Yes	Granholm (2009-present)
Fred Leeb	Pontiac	MBA; Turnaround Specialist (worked with major companies)	No	No	Granholm 2009-present
Robert Mason	Highland Park	Executive Strategy and Management Consultant; Farmington Hills City Council	Yes	No	Granholm (2009)
Joyce Parker	Ecorse	MPA/Township Manager/City Manager	Yes	Yes	Granholm 2009-present
Joseph Harris	Benton Harbor	CPA/MBA/Certified Internal Auditor/Auditor General/CFO	Yes	Yes	Granholm 2010-present